

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11080 of 2003

with

CIVIL APPLICATION No 4967 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RAMESH M SHAH

Versus

UNITED INDIA INSURANCE CO LTD

Appearance:

1. Special Civil Application No. 11080 of 2003
MR VM PANCHOLI for Petitioner No. 1
MR PV NANAVATI for Respondent No. 1
MR VIBHUTI NANAVATI for Respondent No. 1
RULE SERVED for Respondent No. 1
 2. Special Civil Application No. 8811 of 2002
MR VM PANCHOLI for Petitioner No. 1
MR PV NANAVATI for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

ORAL JUDGEMENT

The petitioner herein has challenged the order of the respondent - Company, whereby, inquiry de novo was initiated against the petitioner, by order dated 20/05/03 placed at Annexure 'H' to the petition.

2. As per the said order dated 20/05/03, the Disciplinary Authority decided to appoint new Inquiry Officer and Presenting Officer, as it found that the inquiry procedure, as envisaged in Rule 25 of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 were not followed, and therefore, it came to the conclusion that the inquiry report dated 16/08/02 along with its findings were unreliable.

3. The brief facts of the case are as follows;

3.1 The petitioner was working as a Development Inspector with the respondent Company. While the petitioner was working as a Development Inspector, a raid was carried out by the Central Bureau of Investigation in the personal office of the petitioner. Two cases came to be registered against the petitioner for offences punishable under the Prevention of Corruption Act, 1988, Annexure 'A' to the petition.

3.2 It was also alleged against the petitioner that the petitioner was in possession of assets disproportionate to his known source of income.

3.3 On the basis of the aforesaid two registered cases, the C.B.I. started investigation. During the course of investigation, as no sufficient evidence was found for launching prosecution against the petitioner, it was decided by the said investigating agency to close the case against the petitioner. Accordingly, a request was made before the learned Special Judge, Court No.3, Ahmedabad to close the case against the petitioner. The learned Special Judge by order dated 13/10/92, placed at Annexure 'B' to the petition, accepted the request of the investigating agency and closed the case against the petitioner.

4. In spite of the observations made by the learned Special Judge in its order dated 13/10/92, the respondent Regional Manager issued Memorandum to the petitioner dt. 18/01/93. The petitioner filed his reply vide reply dated 03/02/93 and the first preliminary hearing of the case took place on 27/07/98. Between August 1998 - July 2002, no departmental inquiry was conducted. On 07/08/02, a new Inquiry Officer was appointed and hearing was fixed on 16/08/02. Thereafter, a decision was taken to hold de novo inquiry against the petitioner.

5. Mr.V.M.Pancholi learned advocate appearing for the petitioner has drawn my attention to the order passed by this Court (Coram : A. L. Dave, J.) dated 12/02/04, wherein, the Court had granted ad-interim relief by staying the further proceedings in the case, in view of the decision of the Hon'ble the Apex Court in the case of State of Andhra Pradesh v. N.Radhakrishnan reported in AIR 1998 SC 1833, wherein, it has been observed that the Court has to take into consideration all the relevant facts and has to balance and weigh them, to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to be terminated after delay, particularly when the delay is abnormal and when there is no explanation for the said delay.

6. Mr.Pancholi for the petitioner has submitted that the petitioner is alleged to have acquired assets disproportionate to his known source of income to the tune of Rs.78,703/-. He submits that the period for which the allegation is made is from the year 1985 to 1992 which means a period of more than six years. He, therefore, submits that after the lapse of these many years, it would be difficult for the petitioner to defend his case as he might not be in possession of certain documents and files. He, therefore, states that the impugned order of the respondent is required to be quashed and set aside on the ground of delay itself, in view of the decision of the Apex Court in the case of State of A.P. v. N. Radhakrishnan's case (supra).

7. Mr.P V Nanavaty learned advocate appearing for the respondent - Company has vehemently opposed the arguments advanced by the learned advocate for the petitioner. He has contended that the departmental proceedings were delayed on account of administrative reasons which are beyond the control of the respondent. Therefore, he states that no interference is called for by this Court.

8. In the present case, in spite of several

reminders by the petitioner for completing the inquiry, the respondent has not completed the inquiry within a reasonable time. On the contrary, by order dated 20/05/03, it wanted to initiate inquiry de novo for the alleged allegations of 1991. In my opinion, no fruitful purpose will be achieved, more particularly, when the petitioner has retired from service and because of the pendency of the proceedings, he has not been paid any retiral benefits.

9. Keeping in mind the law laid down by the Apex Court and considering the fact that no allegations of any mis-appropriation are alleged against the petitioner and looking to his family situation, it is not found to be a fit case, where the respondent may be allowed to start inquiry de-novo, after lapse of about twelve years, for no fault on the part of the petitioner. Therefore, the petition is required to be allowed.

10. For the foregoing reasons, this petition is allowed. The order at Annexure 'H' to the petition dated 20/05/93 is ordered to be quashed and set aside and the respondent is restrained from initiating inquiry de novo against the petitioner. Rule is made absolute with no orders as to costs.

(K. S. Jhaveri, J.)

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ORDER IN CIVIL APPLICATION No. 4967 of 2004

In view of the order passed in S.C.A.No.11080/2003, no orders in this Civil Application. The Civil Application stands disposed of accordingly. However, Company will clear the retiral benefits and dues of the petitioner as early as possible and preferably within six months hereafter.

(K. S. Jhaveri, J.)

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